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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,528	09/16/2003	Cyrus G. Lewis	026908.0102-US02	1715
26853	7590	05/18/2004	EXAMINER	
COVINGTON & BURLING ATTN: PATENT DOCKETING 1201 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20004-2401				LAGMAN, FREDERICK LYNDON
ART UNIT		PAPER NUMBER		
				3673

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/662,528	LEWIS, CYRRUS G.
	Examiner Frederick L. Lagman	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-73 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 9/16/03.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Priority***

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-73 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-138 of U.S. Patent No.

6,402,435. Although the conflicting claims are not identical, they are not patentably distinct from each other.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4-7, 10, 11, 15, 16, 17, 19-23, 36-40, 43-48, 52-55, 59, 60, and 71-73 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese reference #61-60929. Japan '929 discloses a retaining wall system comprising a header stack comprised of a plurality of header units 5, pass through ducts 3a, 3b, a structural member 6, a corner stack (see figure 8), and an active reinforcing element 7a, 7b; wherein the corresponding prestressing force is transferred to the header stack at at least one predetermined lock-off point 11.

6. Claims 1-7, 10, 11, 15, 16, 19-23, 31,36-40, 43-48, 72, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by AT reference #296,367. AT '367 discloses a system comprising a header stack comprised of a plurality of header units 1, pass through ducts, a structural member 2, and an active reinforcing element 7; wherein the corresponding prestressing force is transferred to the header stack at at least one predetermined lock-off point 5.

7. Claims 1-7, 72, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenberg #4,726,567. Greenberg discloses a system comprising a header stack

comprised of a plurality of header units 12-17, pass through ducts, a structural member 20, and an active reinforcing element 42, passive reinforcement element 49; wherein the corresponding prestressing force is transferred to the header stack at at least one predetermined lock-off point 46.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese '929 in view of Meheen #5,178,492. Japanese '929 discloses the claimed invention except for the curved portion. Meheen teaches that it is known to provide header unit 10 comprising a curved portion 9 as set forth at column 3, lines 39-41. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a curved portion, as taught by Meheen in order to provide an aesthetically pleasing retaining type wall.

10. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over AT '367 in view of Meheen #5,178,492. AT '367 discloses the claimed invention except for the curved portion. Meheen teaches that it is known to provide header unit 10 comprising a curved portion 9 as set forth at column 3, lines 39-41. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

provide a curved portion, as taught by Meheen in order to provide an aesthetically pleasing retaining type wall.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is 703-305-7456. The examiner can normally be reached on Monday-Friday 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Schackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Frederick L. Lagman  
Examiner  
Art Unit 3673

FLL